

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
TIME: _____
JUL 10 2008

UNITED STATES OF AMERICA,	:	
	:	JAMES BONINI, Clerk
PLAINTIFF,	:	COLUMBUS, OHIO
	:	
vs.	:	CASE No.
	:	JUDGE
JONATHON E. BROWN,	:	
	:	
DEFENDANT.	:	

PLEA AGREEMENT

Plaintiff United States of America and Defendant JONATHON E. BROWN hereby enter into the following plea agreement pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure:

1. Defendant JONATHON E. BROWN will enter a plea of guilty to Count One of the Indictment filed herein which charges him with knowingly possessing child pornography in interstate commerce in violation of 18 U.S.C. § 2252(a)(4)(B) and (b)(2).

2. Defendant JONATHON E. BROWN understands that the maximum penalty that may be imposed pursuant to his plea of guilty to Count One is a term of imprisonment of 10 years, a fine of \$250,000.00 and supervised release from a minimum of five (5) years up to life.

3. Prior to or at the time of sentencing, the Defendant will pay a special assessment of \$100.00, as required in 18 U.S.C. §3013, to the United States District Court, at the Clerk's Office, 85 Marconi Boulevard, Columbus, Ohio 43215. Defendant will furnish to the government a receipt or other evidence of payment by the time of sentencing.

4. Defendant acknowledges liability for the forfeiture alleged in Count Two of the Indictment involving certain facilitating computer equipment and of child pornography, all of which were seized from defendant at the time of the execution of the search warrant. Defendant JONATHON E. BROWN agrees to cooperate fully in the forfeiture of the computer equipment and accessories and the child pornography and also agrees not to contest that forfeiture in any way or to assist others in contesting that forfeiture. Defendant JONATHON E. BROWN further agrees to abandon any and all pornographic materials seized, whether depicting adults or minors or both, and agrees to abandon all photos which depict minors, other than clothed photographs of minor members of his own family.

5. The defendant is aware that the Court has jurisdiction and authority to impose any sentence up to the statutory maximum set forth for the offense to which the defendant pleads guilty.

The defendant is aware that the Court has not yet determined a sentence. The defendant is also aware that the United States Sentencing Guidelines will still be considered by the court in sentencing, but that they are no longer mandatory. Defendant is further aware that any estimate of the probable sentencing range under the sentencing guidelines that the defendant may have received from the defendant's counsel, the United States, or the probation office, is a prediction, not a promise, and is not binding on the United States, the probation office, nor the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

6. The parties enter into the following agreements and make the following recommendations regarding application of the United States Sentencing Guidelines to this defendant:

6.1 U.S.S.G. § 2G2.2 (2006 Manual) is the guideline applicable to the offense resulting in a base offense level of 18;

6.2 Relevant conduct includes a laptop computer and two computer hard drives containing approximately 216 digital videos and approximately 2,090 digital images and approximately 100 paper images of visual depictions of one or more minors engaging in sexually explicit conduct. Special Offense Characteristics under U.S.S.G. § 2G2.2(b) include:

- a) two (2) additional points under subsection (2) for material involving a prepubescent minor;
- b) four additional points under subsection (4) for material that portrays sadistic or masochistic conduct or other depictions of violence;
- c) two (2) additional points under subsection (6) for defendant's use of a computer in possessing the materials; and
- d) five (5) additional points under subsection (7)(D) because the offense involved more than 600 images.

6.3 Defendant has "accepted responsibility" for the offense charged in the Indictment as that term is defined in U.S.S.G. § 3E1.1(a) and is deserving of at least a two point reduction in offense level, and possibly a three point reduction in offense level depending on the final offense level, provided that defendant acknowledges to the government, the Probation Office and the Court the nature and extent of all relevant criminal conduct and continues to deserve this reduction under a reasonable interpretation of the sentencing guidelines.

The parties agree and recommend that no other special offense characteristics or cross references under § 2G2.2 apply, but there are no further agreements on other provisions of the sentencing guidelines or their applicability. Defendant and the United States understand that these recommendations are not binding on the Court and that the final determination of such matters for sentencing purposes rests entirely with the Court.

7. Defendant JONATHON E. BROWN, as a term of any sentence, or as a condition of probation or of supervised release, agrees:

(A) that during any term of probation or supervised release he will permit the installation of appropriate monitoring software, selected and/or approved by the United States Probation Office, upon any computer that he owns, uses, or has access to that is connected to the Internet and that he will permit the United States Probation Office full review of the monitoring software upon the supervising officer's request; and

(B) that he will register as required in 18 U.S.C. §

3583(d) and/or any State or foreign sex offender

registration requirement and will be subject to the

notification provisions of 18 U.S.C. § 4042(c) and/or

any State of foreign sex offender notification

provision.

8. If such plea of guilty is entered, and not withdrawn, and Defendant JONATHON E. BROWN acts in accordance with all other terms of this Plea Agreement, the United States Attorney for the Southern District of Ohio agrees not to file additional criminal charges against Defendant JONATHON E. BROWN based on his activities charged in the Indictment or counted as relevant conduct in the Southern District of Ohio and occurring prior to the date of the Indictment.

9. Defendant JONATHON E. BROWN understands that this agreement does not protect him from prosecution for perjury, should he testify untruthfully, or for making false statements, nor does it protect him from prosecution for other crimes or

offenses as to which he does not make admissions or give truthful information and which the United States discovers by independent investigation. Further, should the Defendant JONATHON E. BROWN fail to comply fully with the terms and conditions set forth herein, this agreement is voidable at the election of the government, in which case Defendant JONATHON E. BROWN shall be subject to prosecution as if the agreement had never been made.

10. By virtue of the defendant pleading guilty to the Indictment in exchange for the plea agreement, the defendant understands that he is not a prevailing party as defined by 18 U.S.C. §3006A (statutory note captioned "Attorney Fees and Litigation Expenses to Defense") and hereby expressly waives his right to sue the United States thereunder.

11. It is agreed that if the Court refuses to accept any binding provision of this Plea Agreement, neither party is bound by any of its provisions; thereafter, Defendant JONATHON E. BROWN may withdraw his guilty plea, and the United States Attorney for the Southern District of Ohio may seek leave to dismiss the Indictment without prejudice and may seek identical and/or additional charges. Defendant JONATHON E. BROWN will not object to such dismissal or filing of further charges.

12. No additional promises, agreements, or conditions have been made relative to this matter other than those expressly set

forth herein, and none will be made unless in writing and signed by all parties.

7/10/08
Dated

Jonathan Brown
JONATHAN E. BROWN,
Defendant

7.10.08
Dated

Phillip D. Lehmkuhl
PHILLIP D. LEHMKUHL (0021246)
Attorney for Defendant

GREGORY G. LOCKHART,
United States Attorney

7-10-08
Dated

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